

MT LEGISLATIVE HISTORY

33

Chapter 425 1987

Bill H 598 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 13 ☒ C

Hearing Date(s) Mar 27 ☒ C

Feb 16 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 16 ☒ C

Mar 27 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 598

INTRODUCED BY RAPP-SVRCEK, MERCER, MILES, VAN VALKENBURG,
COBB, CRIPPEN, REGAN, PINSONEAULT, D. BROWN, DARKO

IN THE HOUSE

RUARY 4, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

RUARY 16, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

RUARY 17, 1987 PRINTING REPORT.

RUARY 18, 1987 ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

RUARY 19, 1987 SECOND READING, DO PASS.

RUARY 20, 1987 ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 90; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

RUARY 21, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

CH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

CH 30, 1987 SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 31, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 598
2 INTRODUCED BY Rep. Frank Macer Miles Van Valkenburg
3 Jim [unclear] Fairbank Sam Brown Larko
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT
5 RESISTANCE BY THE VICTIM IS NOT REQUIRED TO SHOW THAT AN ACT
6 THAT IS AN ELEMENT OF A SEXUAL OFFENSE WAS WITHOUT CONSENT
7 OF THE VICTIM; AND AMENDING SECTION 45-5-511, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 45-5-511, MCA, is amended to read:

11 "45-5511. Provisions generally applicable to sexual
12 crimes. (1) When criminality depends on the victim being
13 less than 16 years old, it is a defense for the offender to
14 prove that he reasonably believed the child to be above that
15 age. Such belief shall not be deemed reasonable if the child
16 is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the

1 exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

9 (4) No evidence concerning the sexual conduct of the
10 victim is admissible in prosecutions under this part except:

11 (a) evidence of the victim's past sexual conduct with
12 the offender;

13 (b) evidence of specific instances of the victim's
14 sexual activity to show the origin of semen, pregnancy, or
15 disease which is at issue in the prosecution.

16 (5) If the defendant proposes for any purpose to offer
17 evidence described in subsection (4)(a) or (4)(b), the trial
18 judge shall order a hearing out of the presence of the jury
19 to determine whether the proposed evidence is admissible
20 under subsection (4).

21 (6) Evidence of failure to make a timely complaint or
22 immediate outcry does not raise any presumption as to the
23 credibility of the victim.

24 (7) Resistance by the victim is not required to show
25 lack of consent. Force, fear, or threat is sufficient alone

LC 1527/01

1 to show lack of consent."

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BI CON I AM I
577	2/17/87	2/17/87				2/20/87					
590		2/16/87	2/16/87	2/16/87							
592		2/18/87				2/19/87					
598		2/13/87	2/16/87	2/16/87							
602		2/19/87	2/23/87	tabled							
604		2/18/87	2/23/87	tabled							
605		2/16/87	2/17/87			2/17/87					
610		2/17/87	2/20/87	2/20/87							
632		2/19/87	2/23/87	tabled							
633		2/17/87				2/23/87					
636		2/17/87	2/20/87	tabled							
655		2/16/87	2/16/87	tabled							
662		2/17/87	2/18/87	tabled							
664		2/16/87	2/16/87	2/16/87							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

involuntary produced language has been stricken and a person involuntarily intoxicated should not be included as a defense.

Mr. Racicot stated that the proposed amendment does speak to this issue.

Rep. Gould also stated that the proposed amendment will cover this problem.

Rep. Eudaily asked Mr. Racicot if there is a definition of intoxication. He stated that he believes intoxicated substance is defined in the criminal code.

Rep. Gould closed the hearing on HB 558 by stating that drunkenness as a defense must be stopped. He urged support for this legislation.

HOUSE BILL NO. 598, Rep. Rapp-Svrcek, District No. 51, stated that when Montana adopted the new criminal code in 1973, the writer wanted to make it clear that proving resistance was not required in a rape case. This bill provides that resistance by the victim is not required to show that an act that is an element of a sexual offense was without consent of the victim. He further stated that for the record the Woman's Law Caucus, from the University of Montana helped him work on the bill.

PROPOSERS:

SANDY CHANEY, Women's Lobbyist Fund, stated that she strongly supports HB 598 because it provides legal recourse for people who live under constant intimidation and constant fear. She submitted written testimony. (Exhibit A).

MARK J. MURPHY, Assistant Attorney General, representing the County Attorney's Association, stated that the Association supports this legislation.

See Visitors' Register for further proponents.

There were no opponents and no questions.

Rep. Rapp-Svrcek closed the hearing on HB 598.

HOUSE BILL NO. 460, Rep. Keenan, District No. 66, stated that this bill is very basic. It raises the fee in divorce proceedings. Page 5 states that the fee is raised from \$30.00 to \$55.00 with \$50.00 being deposited in the state general fund and \$5.00 to be deposited in the children's trust fund. She stated that the purpose in this raise is to fund displaced homemakers in the state.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)			✓
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



EXHIBIT A

DATE 2-13-87

HB # 598

February 13, 1987

Testimony on HB 598

Mr. Chairman and members of the committee:

My name is Sandy Chaney and I am speaking on behalf of the Women's Lobbyist Fund. The WLF strongly supports HB 598. This legislation is needed for victims of sexual assault, particularly in cases of incest or spousal sexual assault.

HB 598 addresses some of the unfortunate realities in many of these kinds of incidents. Often, because of past experiences with the offender, the victim knows that resistance would only anger the assailant further. Resistance would jeopardize the victim even more. In cases of incest or spousal sexual assault, threats--which well may be carried out--often are used by the offender to intimidate and to control the victim.

This bill would provide legal recourse for people who live under constant intimidation and constant fear. The Women's Lobbyist Fund urges you to pass this bill.

Judiciary

BILL NO.

DATE _____

SPONSOR

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FC

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JUDICIARY COMMITTEE
FEBRUARY 16, 1987
PAGE 2

Rep. Bulger stated that he is unclear about the bill and moved to table it. A voice vote was taken and the motion CARRIED 7-6. HB 655, TABLED.

ACTION ON HOUSE BILL NO. 598:

Rep. Strizich moved that HB 598, DO PASS. Rep. Strizich moved amendments but after discussion withdrew his motion. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 598, DO PASS.

ACTION ON HOUSE BILL NO. 590:

Rep. Strizich moved DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 590 DO PASS.

ACTION ON HOUSE BILL NO. 558;

Rep. Gould moved that HB 558, DO PASS. He moved amendments and requested that Mr. MacMaster clarify them. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved that HB 558 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 558, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 509:

Rep. Darko moved that HB 509, DO PASS. Rep. Bulger moved amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 509 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 509 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved that HB 715 be tabled. Question was called and a voice vote was taken. The motion CARRIED 9-5. HB 715, TABLED.

HOUSE BILL NO. 127, Rep. Swift, District No. 64, stated that this act eliminates joint liability and the right to contribution among multiple tortfeasors in civil suits for death or injury to person or property resulting from negligence.

PROPOSERS:

JIM ROBISCHON, Montana Liability Coalition, supported this legislation.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)		✓	
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

February 16, -- 19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 592

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

FIRST

reading copy (WHITE)
color

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0567 RAMIREZ, JACK	3/02	3/25	REDUCTION OF TORT AWARD BY AMOUNT OF COLLATERAL SOURCE PAYMENTS	CONCUR AS AMENDED		3/27
HB0577 BROWN, DAVE	3/02	3/27	TRAINING REQUIREMENT FOR PROBATION OFFICERS	CONCUR		3/27
HB0590 STRIZICH, BILL	2/21	3/27	EXTEND CRIME OF POSSESSION OF WEAPON BY PRISONER TO COUNTY AND CITY JAIL	CONCUR		3/27
HB0592 HARP, JOHN	3/02	3/18	ABOLISH BAD FAITH & BREACH OF COVENANT OF GOOD FAITH & FAIR DEALING ACTIONS	CONCUR AS AMENDED		3/24
HB0598 RAPP-SVRCEK, PAUL	2/21	3/27	RESISTANCE NOT NECESSARY TO SHOW LACK OF CONSENT TO SEXUAL OFFENSE	CONCUR		3/27
HB0605 BROWN, JAN	2/21	3/13	DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS	CONCUR		3/13
HB0610 BROWN, DAVE	3/02	3/27	AUTHORIZE PAROLE AND PROBATION OFFICER TO CARRY FIREARMS AT CERTAIN TIMES	CONCUR AS AMENDED	tabled 3/27	-
HB0664 RAMIREZ, JACK	2/21	3/10	REVISE LAW ON JOINT OBLIGATIONS	CONCUR		3/11
HB0670 BACHINI, BOB	3/02	3/27	RAILROAD EMPLOYEE AS SPECIAL PEACE OFFICER	CONCUR AS AMENDED		3/27
HB0679 KEENAN, NANCY	2/21	3/16	ALLOCATE DOMESTIC ABUSE FINES TO FUND BATTERED SPOUSES PROGRAM	CONCUR AS AMENDED		3/19
HB0696 HANNAH, TOM	3/02	3/20	DE NOVO REVIEW OF DECISIONS OF COMMISSION FOR HUMAN RIGHTS	TABLED	tabled 3/27	-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 27, 1987

The fifty-fourth meeting of the Senate Judiciary Committee was called to order on March 27, 1987, at 10:00 a.m. in Room 325 by the chairman, Senator Joe Mazurek.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 590: Representative Bill Strizich, Great Falls, introduced HB 590, which extends the crime of possession of weapons by prisoners, to county and city jails.

PROPOSERS: Tom Harrison, Montana Peace Officers Assn., supports the bill.

OPPOSERS: There were none.

ACTION ON HOUSE BILL 590: Senator Blaylock moved HB 590 BE CONCURRED IN. The motion carried.

CONSIDERATION OF HOUSE BILL 598: Rep. Paul Rapp-Svrcek, Polson, presented HB 598, which states resistance is not necessary in a court of law to show lack of consent to a sexual assault. He gave the committee testimony from Mark J. Murphy. (Exhibit 1)

PROPOSERS: James Nelson, Glacier County Attorney, favored the bill because a woman might give consent so that her life will be spared. (Exhibit 2)

Katherine Althen, representing herself, supported the bill. (Exhibit 3)

Debra Jones, Women's Fund Lobbyist, supported the bill.

OPPOSERS: There were none.

DISCUSSION ON HOUSE BILL 598: Senator Halligan asked why the bill doesn't say resistance can be used at all. Rep. Rapp-Svrcek thought if the language is broadened too far, it would open abuse to the other side.

Senator Pinsoneault asked Mr. Nelson if he would have used the death penalty if he could on these kinds of cases. Mr. Nelson felt the man would have never been executed and it would have drug the whole process out longer.

Senator Crippen inquired if this might help women prove date rape more often. Rep. Rapp-Svrcek felt it would and that it would help with incest rape also.

Representative Rapp-Svrcek closed the hearing on HB 598.

ACTION ON HOUSE BILL 598: Senator Crippen moved HB 598 BE CONCURRED IN. The motion carried.

CONSIDERATION OF HOUSE BILL 670: Representative Bob Bachini, Havre, introduced the bill, which allows railroad employees to become special peace officers. He said the employees will have to go through training. He presented letters from law enforcement people that would like to go on record in support of the bill. (Exhibit 3A)

PROPOSERS: Tom Lawson, Burlington Northern Railroad, supported the bill. (Exhibit 4)

Jim Mular, BRAC, testified in support of the bill.

Kevin Olson, Montana Police Protective Association, supported the bill.

Rick Laten, Montana Sheriffs and Peace Officers, testified in favor of the bill.

Tim Solomon, Hill County Sheriff, favored the bill also.

OPPOSERS: Patrick Driscoll, Attorney General's office, felt the bill didn't clarify where liability insurance would come into effect in this bill. He presented an amendment to solve the problem. (Exhibit 5)

DISCUSSION ON HOUSE BILL 670: Senator Blaylock asked what this bill will do for the railroad police that they can't do now. Rep. Bachini said it will give them the power of arrest. Senator Blaylock inquired if this bill will include shopping mall security people. Rep. Bachini didn't think it would.

Senator Brown asked if these railroad police will carry firearms. Mr. Lawson said they will carry firearms.

VISITORS' REGISTER

#	NAME	REPRESENTING	BILL #	Check One	
				Support	Oppose
	Mary Ellen Ahrens!	Outletter wife, mother of 7 hungry children	HRS35	✓	
	Debra Frost	women's lobbyist Fund	HB 598	x	
	James C. Nelson--	Glover County Attorney Cust Bank	HBS98	✓	
	Kathy Aiken	Rape Victim	HBS98*	✓	
	Thomas P. Lawton)	Burlington Northern R.R.	HB670	✓	
	Michael C. McCarty	Adult Probation & Parole office	HB 577 H13610	✓	
	Rich Higgins	Burlington - Northern RR	NB670	✓	
	Kevin Olson	MT Police Protective Assoc	HBL70	✓	
	William Adams	Burlington machine	HR670	✓	
	Tom Johnson	Hill County sheriff	HB670	✓	
	Rick Luten	Montana Sheriff's Association	HRL-70	✓	
	Paul Melvin..	MT Federation of State Emp	HB 610 HB 577	✓	
	Mae J. Mulcray	MT Federation of State Emp	HB 610, 577	L	
	Alma Hkey	Dept of Fish & Wildlife	HB-577 HB-610	✓	
	Jerry Brown	MESE	HBS77 610	✓	
	Jim MULAR	BRAC	HB670	✓	
	C.J. Kuntson	B MW B	HB 670	✓	
	CHRIST CHISHOLM	INSTITUTIONS	HB610 HB577		✓

(Please leave prepared statement with Secretary)

DEPARTMENT OF JUSTICE

COUNTY PROSECUTOR SERVICES BUREAU

Justice Building, 215 North Sanders, Helena, Montana 59620 (406) 444-3816

DATE March 27, 1987
BILL NO. HB 598

February 18, 1987

MEMORANDUM

TO: Paul Rapp-Svrcek
FROM: Mark J. Murphy
RE: Testimony In Support Of HB 598

In 1973, the state of Montana adopted a new criminal code that substantially changed the rape law. The crime of rape became Sexual Intercourse Without Consent. The concept of resistance which was presented in the old code was replaced by the standard of without consent. In establishing resistance at trial, the State, in many instances, had to show the victim had been beaten beyond recognition to prove active physical resistance. The new concept of without consent is defined in current law but old concepts die hard and since 1973, resistance has been argued in a number of cases. These cases have muddled the standard of "without consent." The purpose of HB 598 is to clarify the standard of "without consent" and to eliminate the discussion of actual physical resistance from Sexual Intercourse Without Consent cases.

In many training courses, women are instructed that survival is the primary concern of rape situations and a woman should take a course of action that gives her the best chance of surviving.

A victim may decide, when faced with force or threats that no resistance is the best way to survive an attack. It would seem absurd to tell a woman that the state cannot prosecute her case because she made a choice to survive. Once again we would be punishing the victim.

OFFICE OF
COUNTY ATTORNEY

DATE 11/10/87
BILL NO. HB 598

14 EAST MAIN STREET
P.O. BOX 428
CUT BANK, MONTANA 59427

PHONE 873-2278
(AREA CODE 406)

JAMES C. NELSON
COUNTY ATTORNEY

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

Testimony of James C. Nelson, Glacier County Attorney
on H.B. 598--March 27, 1987.

The offense of rape is not a crime of sex. It is a crime of violence. Violence directed at a woman who generally is in no position to do anything but hope and pray that she will not be brutalized, maimed or killed and that her attacker will simply do what he came to do and then leave her alone, in one piece, to try to put her emotions and her sanity and her marriage and her family and her life itself back together.

And so it was with Katherine Althen on November 2, 1986 when she stopped on Hiway 2, five miles east of Cut Bank, to give Joe Wayne Baughman a ride to Shelby because his car was broken down on the highway. She didn't know that Baughman had raped a woman at knife point in Texas seven years before and was on parole. She didn't know that he would pull a knife on her and force her to drive down a desolate road where she would be repeatedly raped orally and vaginally over the next hour and a half.

She only knew, once the nightmare had started, that if she was to see the passing of her 36th birthday that she could not anger her attacker. She knew that she had no where to run; no where to hide; no one to call for help; and not enough strength to overpower the man who was brutally and forever changing her life. The only defense she had was her wits and her guts and her determination that she would not resist so that she could live to see another day and return to her husband and family.

And she did. And Joe Wayne Baughman was arrested the same night. And he went to trial because he didn't have anything to loose. And he took the stand and testified at length how Katherine Althen had not resisted; how she had cooperated with him; how he never brutalized her; how, in fact, it was she who had attacked him and performed sex on him while his thoughts were totally occupied with suicide. And Joe Wayne Baughman's attorneys argued that because she didn't resist, she had consented to the sex and therefore she wasn't raped.

The jury didn't believe it. They took less than forty-five minutes after a week-long trial to convict Baughman of four major felonies. The judge didn't believe it. He sentenced Baughman to 110 years in the State Prison.

But Katherine Althen--whose only crime was to be a good samaritan--had to leave the trial after Baughman's testimony because she was physically ill from humiliation. She had to be treated by a doctor. Her mother and father and sister and husband who attended the trial had to sit by and watch their wife and daughter and sister humiliated and victimized by the Defendant a second time and by the system that she was trying to cooperate with.

And all because her lack of physical resistance under circumstances where resistance would have probably caused her death was used by the Defendant to argue that she had "consented" to his sexual assault upon her.

Two years ago this legislature adopted a substantial body of law designed to protect the rights of victims of crime. HB 598 is a very necessary and important extension of that legislation. The victim of a rape should not have to put her life and limb in jeopardy by resisting under circumstances where, to do so, would cause her to be killed or seriously injured. The defendant in the rape case should not be able to then use that lack of resistance as evidence of consent. Right now we as a State are allowing criminal rape defendants to use the only defense the victim has against her at trial. It is not right; it is not fair; it is not moral.

I have attached to the written copy of this testimony a copy of the Motion and Affidavit for Leave to File Information and a copy of the Information. From that you will see what Katherine Althen was up against on the night of November 2, 1986 and what Joe Wayne Baughman was ultimately convicted of.

As a county attorney and prosecutor, I very strongly urge you to support HB 598. Victims of rape have rights too. They have the right not to be raped twice--once by the Defendant and once by the criminal justice system they are only trying to help. Many rapes go unreported, and the experience of Katherine Althen at trial is why. HB 598, if enacted into law--will go a long way towards tipping the scale of justice back to the center in rape trials. We owe that much at least to the women of the State.

Thank you.

SENATE JUDICIARY

EXHIBIT NO.

2

DATE

3-27-87

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF GLACIER

STATE OF MONTANA,

Plaintiff,

vs.

JOE WAYNE BAUGHMAN,
a/k/a Joseph Baughman,

Defendant.

FILED

NOV 5 1986

Walter Jackson
May Schipper

No. DC 86-27

MOTION & AFFIDAVIT FOR ORDER GRANTING LEAVE TO FILE INFORMATION

STATE OF MONTANA)

ss.

County of Glacier)

James C. Nelson, being first duly sworn, upon oath, deposes and says:

1. That he is the duly elected, qualified and acting County Attorney in and for the County of Glacier and attorney for the State of Montana herein.

2. That the above named Defendant has committed offenses in Glacier County more particularly hereinafter set forth, and that pursuant to Section 46-11-201 MCA the Court should grant leave to file an Information directly in District Court charging the above named Defendant with the offenses of AGGRAVATED KIDNAPPING, a FELONY, in violation of Section 45-5-303(1) (b) MCA; SEXUAL INTERCOURSE WITHOUT CONSENT, a FELONY, in violation of Section 45-5-503(1) MCA; FELONY ASSAULT, in violation of Section 45-5-202(2) (b) MCA; and CARRYING CONCEALED WEAPONS, a FELONY, in violation of Section 45-8-316(1) MCA.

3. That the following information is submitted to establish probable cause for the filing of said charges:

On November 2nd, 1986, Katherine Althen left her home in Whitefish, Montana, and proceeded by car, alone, through Cut Bank, Glacier County, Montana, east on Highway #2, on her way to Shelby.

Althen proceeded through Cut Bank at approximately 5:00 to 5:15 P.M. East of Cut Bank, along Highway #2, near the East Marias Road, Althen observed the Defendant and his vehicle parked beside the roadway. The Defendant's vehicle had its hood up and he signaled to Althen to stop.

Believing that the Defendant had car trouble, and attempting to render assistance, Althen stopped. The Defendant approached Althen's vehicle and requested a ride to Shelby for the purpose of obtaining assistance in repairing his vehicle. The Defendant got into Althen's vehicle and they started to drive east on Highway #2 towards Shelby when the Defendant

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3-27-87

BILL NO. H.B. 598

stated that he had forgotten something in his car and requested Althen to turn around and go back, which she did.

The Defendant retrieved something from his vehicle and then got back in Althen's car. As they again started towards Shelby, the Defendant stated that he remembered he had a friend, Darrell Sanders, who resided a ways down East Marias Road and that he might obtain assistance there. Althen agreed to drive the Defendant to the Sanders' farm house. When they arrived at the farm house the Defendant went into the house and spoke to someone there.

The Defendant came out of the house and advised Althen that his friend was working at Bair's Truck Stop in Shelby. Althen and the Defendant then proceeded back along East Marias Road towards Highway #2. Before arriving at Highway #2 the Defendant asked Althen if she ever had affairs while she was driving alone. At that point he pulled a kitchen type knife with a blade 4 inches long or longer which had been concealed in his boot or under his pant leg. The Defendant then advised Althen that she shouldn't pick up strangers on the highway.

While either holding the knife or having it in his lap in Althen's view, the Defendant required Althen to drive off East Marias Road on to a side road, ostensibly for the purpose of talking to her. On two different occasions Althen attempted to drive by the side road that the Defendant had demanded that she drive down, but in each instance the Defendant required her to stop and drive down the side road.

After driving down the side road for a short distance, the Defendant required Althen to stop her vehicle. Having observed the knife, Althen was in fear of her life and felt that she would be killed. Accordingly, she tried to keep the Defendant calm and "play along" with him.

Finally the Defendant suggested that they get out of the car. After getting out of the car the Defendant against her will, pushed himself against Althen and kissed her several times, inserting his tongue in her mouth while he was doing so. Defendant then advised Althen that he wanted to have sex with her. Again, believing that she would be killed if she angered the Defendant or tried to resist, Althen complied with the Defendant's demands, and over a period of approximately 1 to 1 1/4 hours, had oral sex with the Defendant 3 to 4 times and vaginal sex with the Defendant 4 to 5 times. In connection with the oral sex the Defendant caused Althen to take his penis into her mouth; and in connection with the vaginal sex, the Defendant inserted his penis into the vagina of Althen. At various times the Defendant also fondled Althen's breasts, vaginal area and buttocks with his hands. The Defendant did not ejaculate either during the oral or vaginal sex.

During the time that she was with the Defendant, Althen kept watching for an attempt to escape. On one occasion Althen attempted to get into the car and shut the door and lock it, however, the Defendant prevented Althen from shutting the door with his body. On another occasion Althen attempted to run down the side road away from the Defendant but he caught her and brought her back to the car.

Althen finally was able to get into her car and lock the doors. While trying to drive away the Defendant jumped on to the hood of the car and on to the top of the car and hung on for some distance before finally agreeing to get off of the car if Althen stopped. During that time that the Defendant was on the car he pounded on the window and attempted to get into the car.

After the Defendant got off of Althen's car, she drove back to Highway #2 via East Marias Road. As she approached the Defendant's vehicle she

1 stopped long enough to get a general description of the vehicle. She
2 described the vehicle as being a full sized yellow or light colored car
3 with a DJ's Auto Sale dealer plate on the front and a 20 day sticker in the
4 back. She also noted a red v-like symbol on the car hood.

5 Althen then drove to the Point Drive-In in Cut Bank and notified the
6 authorities. Members of the Glacier County Sheriff's Department
7 immediately proceeded to the crime scene but could not locate the Defendant
8 or his automobile.

9 Althen's description of her assailant to the Glacier County Sheriff's
10 Deputy pointed to the Defendant. Althen stated that during her
11 conversations with the Defendant he had stated that he had recently won a
12 poetry contest and had been to Florida in connection with that but didn't
13 win the grand prize. He also indicated that he had had a song published in
14 1981 and that his girlfriend was pregnant and due to deliver in December.
15 He also stated that his wife in Houston would not let him see their
16 children. The Defendant in fact recently won a cowboy poetry contest and
17 travelled to Florida but did not win any additional prizes. He also has a
18 girlfriend who is pregnant and about due to deliver. The Defendant is from
19 Texas and is on parole for Aggravated Felony Abuse involving use of a
20 weapon committed in that State.

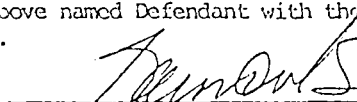
21 Additionally, Althen's physical description of the Defendant matched
22 his appearance and her description of his automobile matched the
23 description of the car which Deputy Sheriff William Barron knew was owned
24 by the Defendant. Over the past 18 to 24 months the Defendant had been
25 involved with assaulting and harassing females in Cut Bank. In March 1985
26 the Defendant plead guilty to Misdemeanor Assault in Glacier County Cause
27 No. DC 84-27 involving the assault on a young woman, wherein he threatened
28 her with a letter opener after obtaining entry to her house on the pretext
29 of using her phone to obtain assistance because he had car trouble.

30 Finally, Althen identified the Defendant's picture from a photo
31 lineup.

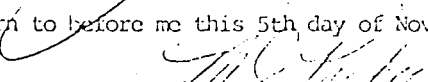
32 At all times after the Defendant displayed the kitchen knife to
Althen, she was in fear of her life and felt that she would be killed if
she angered the Defendant or resisted his having sex with her.

After the Defendant's arrest, he admitted to Officer Barron that he
had been with Althen and that she had given him a ride and that he had had
sex with her but he claimed that the sex was consensual.

WHEREFORE pursuant to Section 46-11-201 MCA the undersigned moves the
Court for an Order granting leave to file an Information directly in
District Court charging the above named Defendant with the offenses as more
particularly set forth herein.


James C. Nelson, Glacier County Attorney

Subscribed and sworn to before me this 5th day of November, 1986.


Notary Public for the State of Montana
Residing at Cut Bank, MT
My commission expires Oct. 30, 1989

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3-27-87

BILL NO. H.B. 598

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF GLACIER

STATE OF MONTANA,

Plaintiff,

vs.

JOE WAYNE BAUGHMAN,
a/k/a Joseph Baughman,

Defendant.

FILED

NOV 8 1986

CLERK OF DISTRICT COURT

No. DC 86-27

INFORMATION

In open Court on the 5th day of November, 1986, comes James C. Nelson, Glacier County Attorney, attorney for the State of Montana, having first obtained leave of Court as required by law, and accuses the above named Defendant as follows:

COUNT ONE

That on or about the 2nd day of November, 1986, in Glacier County, Montana, East of Cut Bank, Montana, between the hours of 5:30 P.M. and 7:30 P.M. the above named Defendant committed the offense of AGGRAVATED KIDNAPPING, a FELONY, in violation of Section 45-5-303(1) (b) MCA.

The facts constituting this offense are as follows:

That at the time and place above mentioned the Defendant knowingly or purposely and without lawful authority restrained another person, to-wit, Katherine Althen, by either secreting her or holding her in a place of isolation or by using or threatening to use physical force with the purpose to facilitate the commission of a felony, to-wit, Sexual Intercourse Without Consent, a Felony, in violation of Section 45-5-503(1) MCA.

COUNT TWO

That on or about the 2nd day of November, 1986, in Glacier County, Montana, East of Cut Bank, Montana, between the hours of 5:30 P.M. and 7:30 P.M. the above named Defendant committed the offense of SEXUAL INTERCOURSE WITHOUT CONSENT, a FELONY, in violation of Section 45-5-503(1) MCA.

The facts constituting this offense are as follows:

That at the time and place above mentioned the Defendant knowingly had sexual intercourse without consent with a person of the opposite sex, to-wit, Katherine Althen.

COUNT THREE

That on or about the 2nd day of November, 1986, in Glacier County, Montana, East of Cut Bank, Montana, between the hours of 5:30 P.M. and 7:30 P.M. the above named Defendant committed the offense of FELONY ASSAULT, in violation of Section 45-5-202(2) (b) MCA.

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EXHIBIT NO. 2

DATE 11-27-87

The facts constituting this offense are as follows:

That at the time and place above mentioned the Defendant knowingly or purposely caused reasonable apprehension of serious bodily injury in another, to-wit, Katherine Althen, by use of a weapon, to-wit, a knife.

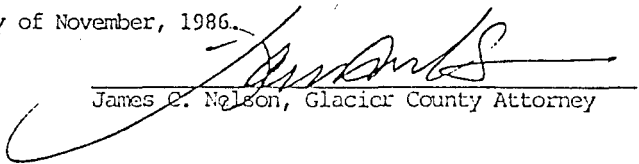
COUNT FOUR

That on or about the 2nd day of November, 1986, in Glacier County, Montana, East of Cut Bank, Montana, between the hours of 5:30 P.M. and 7:30 P.M. the above named Defendant committed the offense of CARRYING CONCEALED WEAPONS, a FELONY, in violation of Section 45-8-316(1) MCA.

The facts constituting this offense are as follows:

That at the time and place above mentioned the Defendant knowingly carried or bore concealed upon his person a knife having a blade 4 inches long or longer.

Dated this 5th day of November, 1986.

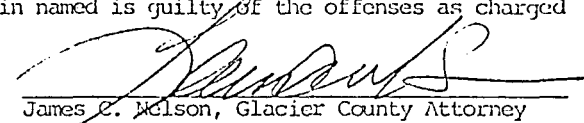

James C. Nelson, Glacier County Attorney

STATE OF MONTANA)

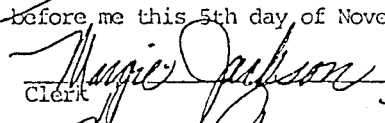
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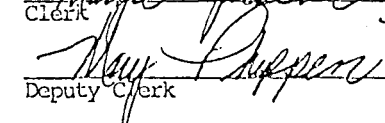
County of Glacier)

James C. Nelson, having been first duly sworn, says that he is the County Attorney for Glacier County, Montana, and that on information and belief says that the facts stated in the foregoing Information are true, and that the Defendant therein named is guilty of the offenses as charged and as herein set forth.


James C. Nelson, Glacier County Attorney

Subscribed and sworn to before me this 5th day of November, 1986.


Clerk


Deputy Clerk

LIST OF WITNESSES

Katherine Althen, Whitefish, MT
William Barron, Deputy Sheriff, Glacier County Sheriff's Office, Cut Bank, MT
Scott Murray, Cut Bank City Police, Cut Bank, MT
Richard Wevley, Cut Bank City Police, Cut Bank, MT
James Persling, Sheriff of Glacier County, Cut Bank, MT
Dr. Mark Kelly, Cut Bank, MT
Lee Jacobson, R.N., Cut Bank, MT
Walter Joyce, State Identification Bureau, Helena, MT
The State will also call forensic chemist and scientist from the State Criminal Investigation Laboratory in Missoula, MT, for the purpose of identifying blood samples and body fluid samples and hair samples taken and to be taken from the complaining witness and the Defendant. The names of such persons are not immediately known to the State.
Betty Welch, Cut Bank, MT.
Diana Lea Jensen, Cut Bank, MT.
Witnesses from Harris County TX re: Defendant's conviction of Aggravated Sexual Abuse-- April 1979

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3-27-87

BILL NO. H.B. 598

MONTANA NINTH JUDICIAL DISTRICT COURT, GLACIER COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

JOE WAYNE BAUGHMAN,

Defendant.

FILED

MAR 24 1987

Marqu Jackson
CLERK OF THE DISTRICT COURT

Karen Lillrud
DEPUTY

No. DC 86-27

JUDGMENT & SENTENCE

The laws and statutes of the State of Montana having first been complied with, a criminal Information was filed herein on the 5th day of November, 1985, by James C. Nelson, Glacier County Attorney, attorney for the State of Montana, charging the Defendant, Joe Wayne Baughman, with the offenses of AGGRAVATED KIDNAPPING, a FELONY, in violation of Section 45-5-303(1) (b) MCA; SEXUAL INTERCOURSE WITHOUT CONSENT, a FELONY, in violation of Section 45-5-503(1) MCA; FELONY ASSAULT, in violation of Section 45-5-202(2) (b) MCA; and CARRYING CONCEALED WEAPONS, a FELONY, in violation of Section 45-8-316(1) MCA.

Thereafter, Charles Jacobson, Attorney at Law, Conrad, Montana, and James Johnson, Attorney at Law, Shelby, Montana, were appointed to represent the Defendant as his counsel.

The Defendant was arraigned on December 17th, 1986, then and there being accompanied and represented by his counsel, Charles Jacobson, and was advised of the nature of the charges against him, of the maximum sentence after a plea or verdict of guilty, and of his rights to a trial by jury, to require the State to prove the charges against him beyond a reasonable

SENATE JUDICIARY

EXHIBIT NO. 2

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FILE NO. 113 598

doubt, to cross examine witnesses and present witnesses on his own behalf,
and to remain silent.

Said Defendant then entered a plea of not guilty to the Information.

Thereafter a trial by jury was held in the above entitled Court on the
23rd day of February, 1987, and the jury returned the following verdict:

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA, IN AND FOR THE COUNTY OF GLACIER

STATE OF MONTANA,

Plaintiff,

vs.

JOE WAYNE BAUGHMAN,

Defendant.

No. DC 86-27

VERDICT

We, the jury, duly impaneled and sworn to try the issues in the above
entitled cause, make the following verdicts:

1. COUNT ONE: To the charge of AGGRAVATED KIDNAPPING guilty.

If all twelve of you find the Defendant "guilty" of the offense of
Aggravated Kidnapping, then proceed to paragraph #3. If all twelve of you
find the Defendant "not guilty" of the offense of Aggravated Kidnapping,
then proceed to paragraph #2.

2. To the charge of Kidnapping

(Write on the above line "guilty" or "not guilty")

3. COUNT TWO: To the charge of SEXUAL INTERCOURSE WITHOUT CONSENT
guilty.

4. COUNT THREE: To the charge of FELONY ASSAULT guilty.

5. COUNT FOUR: To the charge of CARRYING CONCEALED WEAPONS guilty.

Dated this 2 day of March, 1987.

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H.B. 598

IRENE MARTIN
Foreperson

1 Thereafter, the Court ordered a presentence investigation, which has
2 been prepared by Jerome J. Skiba, District Probation/Parole Officer III,
3 and which has been filed herein. Pursuant to notice, the Defendant then
4 appeared in Court on March 24th, 1987, for sentencing, then and there being
5 accompanied and represented by his counsel, Charles Jacobson and James
6 Johnson. The State presented testimony, witnesses and argument in
7 aggravation of sentence. The Defendant testified on his own behalf and his
8 counsel argued for leniency.

9 The Court has considered the Presentence Investigation Report, the
10 testimony at trial, all files and records in this case, and the testimony
11 at the sentencing hearing. The Court did not consider the numerous letters
12 mailed to the Court requesting that the Defendant receive a severe
13 sentence. From those matters which the Court did consider it finds as
14 follows:

15 The Defendant comes before this Court having plead guilty to the
16 offense of Aggravated Sexual Abuse in the State of Texas in 1979, the facts
17 of which case were very close to those in the instant case. The Defendant
18 committed the offenses of which he has been found guilty while on parole
19 from the State of Texas. He has also plead guilty to a misdemeanor assault
20 in Glacier County in 1984.

21 At trial the Defendant took the stand and testified on his own behalf.
22 In doing so the Defendant's credibility is to be judged the same as any
23 other witness. It is obvious that the jury did not believe the Defendant's
24 testimony nor did this Court. His story simply did not make any sense.

25 While the Court recognizes that the Defendant probably now regrets his
26 involvement in the crimes of which he has been found guilty and while the
27 Court recognizes that the Defendant's conduct has caused embarrassment and
28 hurt to his family in Cut Bank, nevertheless, the Defendant's conduct in
29 the State of Montana and in the State of Texas have caused irreparable
30 damage to the lives of the young women with whom he has engaged in criminal
31 conduct.
32

SENATE JUDICIARY

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BILL H.B. 598

1 The Defendant has come into Court requesting leniency. Under the
2 individual circumstances of this case and because of the Defendant's prior
3 felony criminal conviction for essentially the same crimes as committed
4 against Katherine Althen, it is difficult to consider granting the
5 Defendant leniency.

6 While one of the objectives of sentencing is rehabilitation,
7 nevertheless, an equally important objective under the appropriate
8 circumstances, such as is presented in this case, is the protection of
9 society and the punishment of crime. There is simply no room outside the
10 prison walls for people who destroy other people's lives and the peace and
11 dignity of the citizens of this state.

12 While Defendant's counsel has attempted to compare this case with
13 similar cases in the District, nevertheless, this case is unique and the
14 Court imposes sentence based upon those unique features.

15 Neither the Defendant nor his counsel having offered any legal excuse
16 as to why sentence should not be imposed, it is the JUDGMENT and the
17 SENTENCE of this Court as follows:

18 1. That on his conviction for the offense of Aggravated Kidnapping, a
19 Felony, the Defendant be incarcerated in the Montana State Penitentiary at
20 Deer Lodge, Montana, for a period of 100 years.

21 2. That on his conviction for the offense of Sexual Intercourse
22 Without Consent, a Felony, the Defendant be incarcerated in the Montana
23 State Penitentiary at Deer Lodge, Montana, for a period of 20 years.

24 3. That on his conviction for the offense of Felony Assault, the
25 Defendant be incarcerated in the Montana State Penitentiary at Deer Lodge,
26 Montana, for a period of 10 years.

27 4. That on his conviction for the offense of Carrying Concealed
28 Weapons, a Felony, the Defendant be incarcerated in the Montana State
29 Penitentiary at Deer Lodge, Montana, for a period of 5 years.

30 5. That all of the foregoing sentences shall run concurrently.

31 6. That there is added to the foregoing sentences a term of 10 years,
32 pursuant to Section 46-18-221 MCA by reason of the fact that the Defendant

3. STATE JUDICIARY

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DATE 3-27-87

BILL NO. H.B. 588

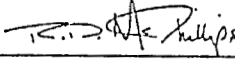
1 committed the offenses charged in the Information with a weapon, to-wit, a
2 kitchen knife with a blade 4 inches long or longer. Said term of 10 years
3 shall run consecutively to the sentences set forth in paragraphs 1 through
4 4, inclusive, above.

5 7. For the reasons set forth above, the Defendant is designated as a
6 DANGEROUS OFFENDER for purposes of eligibility for parole.

7 8. That the Defendant shall receive credit for 141 days served in the
8 Glacier County Jail.

9 9. That the surcharge imposed by Section 46-18-236 MCA is hereby
10 waived by reason of the fact that the Defendant will be incarcerated and
11 will be unable to pay said surcharge.

12 Done in Open Court this 24th day of March, 1987.

13 
14 _____
15 R. D. McPhillips, District Judge
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SENATE JUDICIARY

EXHIBIT NO. 2

DATE 3-27-87

Testimony before the Senate Judiciary Committee on H. B. 598
By Katherine Althen, March 27, 1987

There has been only one time in my life when I was in absolute terror. Only one time I thought my life had come to an end. Only one time I thought I would be raped, stabbed, hacked, and left in a ditch. This absolutely unimaginable situation occurred when my assailant-to-be reached down to the floor, came up with a butcher knife, and said "Hasn't anyone ever told you never to pick up hitchhikers?" I couldn't believe this was happening to me. I told him I would do anything he wanted. He said I shouldn't be frightened, that he just wanted me to drive down a side road so we could talk. I didn't want to die. I thought about screaming, grabbing the knife, stopping and jumping out of the car. However, I was on a dirt road in an unfamiliar and very desolate area between Cut Bank and Shelby. There was no possibility of getting help. I felt that any action that showed how scared I was would only make my situation worse. I tried passing the side road, but he pulled the car out of gear, saying "No, we're going down this road." I backed up and tried to drive past again, and he waved the knife at me and said, "No, down this road." I drove down the road. I kept thinking that I was going to die, and that I wasn't ready to die. When we stopped, I expected him to start hacking at me. I was relieved when he didn't. He said he wanted me to talk about myself, so I did. I was going to do whatever he wanted me to do. The only weapon I had was my wits. If I could lull him into believing that I had forgotten that he had pulled a knife on me and that it was still pointed at me, I thought I might be able to escape. The longer I played along with him, the longer I would be alive. I asked him about himself, and he said he was going to commit suicide that night. All I could think was that he was going to murder me before he murdered himself. I tried to calm him down, and stressed that life was worth living. We talked for about 15 minutes. All this time, the butcher knife had been in his right hand, cradled in his lap. Eventually I persuaded him to put it away. I felt like I had won the first battle. He wanted us to get out of the car. I complied. I realized as soon as I got out of the car and he was standing next to me that I had missed my chance to escape. I felt stupid. I felt that that mistake had probably cost me my life. He asked me for a kiss. I told him I didn't want to kiss him, that I was happily married and hadn't kissed anyone but my husband for 11 years. He said he just wanted one "friendly" kiss. He inserted his tongue in my mouth and moved it around. I was disgusted. He insisted on a second kiss. I didn't want to irritate the man. I tried to push him away. I couldn't. I considered kneeling him in the groin, stomping on his instep, kicking, scratching, hitting, biting. However, I knew I couldn't kill him with my bare hands. My only chance was to maneuver him far enough away from me and the car so that I could jump in and lock the doors. I decided the smartest thing for me to do was to let him rape me. I decided that rape was preferable to an immediate, violent death. He had me

repeatedly perform oral and vaginal sex with him. I tried to escape by jumping in the car. I ended up slamming his body in the door when he threw himself at me. Soon after that I ran down the road. He caught me and pushed me back to the car. I knew I was dead at that point. He surprised me by starting to cry. He suggested we sit in the car and talk. As he was walking behind the car, I jumped in and locked the doors. I was free!

The prosecution of this case was almost as humiliating as the rape itself. I was on trial. I had not "resisted". I was on the stand for parts of 3 days. I was victimized by rape myths. I couldn't have been raped because I wasn't battered. However, my assailant could have been like another weapon-wielding rapist who said: "'I was always gentle and kind until I started to kill them. And the killing was always sudden, so they wouldn't know it was coming.'"¹ I am lucky to be alive.

House Bill 598 is a necessary addition to Montana's sexual crimes legislation. It will shift the focus from the victim's conduct (lack of resistance) to the assailant's conduct (use of force, fear or threat).

¹Diana Scully and Joseph Marolla, "Convicted Rapists' Vocabulary of Motive: Excuses and Justifications," Social Problems, Vol. 31, No. 5, June 1984, pp.530-544., p.541.

March 27

19 37

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on

HOUSE BILL 598

having had under consideration

No.

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Resistance not necessary to show lack of consent to sexual offense.
X Eapp-Svrcek (Crippen)

HOUSE BILL 598

Respectfully report as follows: That

No.

~~DO NOT PASS~~

~~DO NOT PASS~~

BE CONCURRED IN

~~DO NOT PASS~~

Senator Mazurek

Chairman.